vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1127 OF 2002

Govind Gaurya Patil
Convict NO.-C11897,
presently lodged at
Yerawada Central Prison, Pune ... Appellant

V/s.

The State of Maharashtra
(at instance of Nhava Sheva
Police Station, Dist.:Raigad) ... Respondent

None for Appellant
Mrs.V.R. Bhosale, APP, for Respondent

CORAM: **V.G. PALSHIKAR, Ag. C.J. & SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 24, 2006**

ORAL JUDGMENT (PER SMT.MHATRE, J.):

. This appeal has been preferred by the Appellant against his conviction under section 302 and sentence. He has been acquitted of the offence punishable under section 498A of the Indian Penal Code by the Additional Sessions Judge, Raigad. As the advocate appointed for the appellant is not present, we have perused the record with the assistance of the learned Assistant Public Prosecutor and have proceeded to decide the appeal.

2. The case of the prosecution is that the deceased Ranjana was set on fire by her husband, the accused. This incident happened on 5.10.1998. After being set ablaze, the deceased had rushed to her mother's house which was closeby. She had informed her mother in the

presence of her nephew that the accused had set her on fire, and that he attempted to extinguish the fire by dousing her with water. The mother of the deceased informed the police of the incident. The deceased was removed to hospital for treatment. She was then taken to Sion hospital for adequate medical treatment. The dying declaration of the deceased was recorded by a constable, who admitted her to hospital. This dying declaration was recorded on 6.10.1998. Another declaration was recorded by the Special Executive Officer on the same day. Ranjana died on 9.10.1998, four days after she was set on fire. The appellant was arrested and charged for having committed the murder of the deceased.

3. The prosecution has examined six witnesses in order to prove the charge against the appellant. Vithabai, the mother of the deceased is PW1, has stated in her evidence that her daughter disclosed to her that her husband set her on fire and that she had lodged a complaint with the police. This witness in crossexamination has deposed that her husband died two months before this incident. She has however, admitted that she could not say whether her daughter got burnt while using the stove for cooking.

4. The nephew of the deceased Mangesh was examined as PW2. This witness has stated that the deceased

disclosed in his presence that her husband had poured kerosene on her saree and had placed one end of the sareee on a lighted stove. Her clothes caught fire and she was burnt. This witness has also stated that the accused used to beat his wife. He has stated further in his crossexamination that the deceased had also mentioned that the accused had tried to douse the fire. Therefore, in all material particulars, he has corroborated the evidence of the PW1. PW3 is the panch witness who was present when the spot panchanama was drawn. This witness was also present when the seizure panchanama was recorded which is at Exhibit 12. The police had taken custody of some of the burnt clothes of the deceased which were smelling of kerosene besides other articles available on the spot like the stove containing kerosene, a small bottle containing some kerosene, a half used wick and matchsticks.

5. PW4 is the PSI who was informed of the incident by the mother of the deceased. The next witness examined by the prosecution was the police head constable who has recorded the statement of the deceased. He recorded her statement in Sion hospital. He has stated that he ensured from the Doctor attending the deceased that she was in a position to make a statement. He has stated that the Doctor was treating her when he went to record the statement of the deceased.

6. The last witness examined on behalf of the prosecution is the Special Executive Officer, who has recorded the dying declaration of the deceased. He has also stated that he ascertained from the Doctor that the deceased was medically fit to have her statement recorded before proceeding to record the same.

7. This being the oral evidence on record, it would now be necessary to consider whether the dying declarations of the deceased can be accepted. Both the dying declarations have no endorsement of a certificate from the Doctor attending to the deceased. However, this is not a lacuna which would lead us to discard the dying declarations. Both PW5 and PW6 have deposed that they obtained the opinion of the Doctor attending the deceased as to her mental condition and then recorded the statements. Therefore, the lack of certification by the Doctor would not in our opinion, matter much in the present case. A bare perusal of both the statements recorded by PW5 and PW6 respectively would indicate that the deceased has been consistent in her story about how she sustained the burn injuries. In both the statements, she has stated that on 5.10.1998 at about 12.30, the accused returned home and started abusing her. She then left for her mother’s place and the accused followed her there. She has narrated that she returned home with the accused who made allegations

about her character. He then assaulted her. The deceased has stated that she left the house again at around 3 in the afternoon and went to her mother's place. Again, the accused followed her and assaulted her in her mother's presence. When her mother rescued her, the accused left her mother's residence. She then has stated that at about 7.30 in the evening, the accused returned to her mother's place and requested her to return home. She therefore, returned home where the accused asked her to cook dinner. The deceased requested the accused to purchase fish for her to cook and she lay down on the bed. The accused, instead of complying with her request, assaulted her again. He then emptied a part of the kerosene which was in the small wick lamp on the deceased. Thereafter, he held one end of the saree which she was wearing near the stove and lighted the stove resulting in the saree catching fire. She cried for help but nobody came to her rescue. However, the accused tried to douse the flames with water and the flames on the saree were extinguished. The deceased then ran to her mother's place and informed her of the incident. Significantly, both the dying declarations contain the same narration of facts. There are no material changes in both the statements. We, therefore, have no hesitation in accepting the statement made by the deceased as genuine.

8. The dying declarations and the testimony of PW1

and PW2 which corroborate the statements of the deceased point to the complicity of the accused in the crime. In our view, therefore, there is no manner of doubt the prosecution has proved its case that the accused was responsible for the death of the deceased. He had set her ablaze. On seeing her burning, he obviously repented and therefore, sought to douse the flames. This action of the accused will, however, not lead to an inference that he had no intention to kill the deceased.

9. The judgment and order of the Sessions Court is upheld. Appeal dismissed.